

**EXHIBIT A-1**

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THE HONORABLE FRED VAN  
SICKLE

7  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF WASHINGTON  
10 AT RICHLAND

11 JAMES S. GORDON, JR.,  
12 a married individual d/b/a  
13 'GORDONWORKS.COM';

14 Plaintiffs,

15 v.

16 IMPULSE MARKETING  
17 GROUP, INC., a  
18 Nevada/Georgia corporation;  
19 JEFFREY GOLDSTEIN,  
20 individually and as part of his  
21 marital community; PHILLIP  
22 HUSTON, individually and as  
23 part of his marital community;  
24 KENNETH ADAMSON,  
25 individually and as part of his  
26 marital community; JOHN  
27 DOES, I-X,

NO. CV-04-5125-FVS

[FIRST AMENDED]  
COMPLAINT FOR DAMAGES UNDER  
THE CAN-SPAM ACT OF 2003 [15  
U.S.C. §7701, *et seq.*]; WASHINGTON  
CONSUMER PROTECTION ACT  
(RCW 19.86); THE WASHINGTON  
COMMERCIAL ELECTRONIC MAIL  
ACT (RCW 19.190); RCW 19.170 *et seq.*,  
and Injunctive Relief

[JURY DEMAND]

28 COMES NOW, Plaintiff James S. Gordon, Jr. and brings this COMPLAINT  
against defendants named herein. Plaintiff alleges the following on information and  
belief:

1 **1. PARTIES**

2 1.1 Plaintiff James S. Gordon, Jr. ("Gordon") is a married individual who  
3 is and was a resident of Benton and/or Franklin County, Washington, and  
4 who was doing business as an interactive computer service as  
5 'gordonworks.com', during the time of all acts complained of herein.  
6

7  
8 1.2 Defendant Impulse Marketing Group, Inc., ("Impulse") upon  
9 information and belief, is a **Nevada** corporation, with its principle place of  
10 business located in Georgia.  
11

12 1.3 Defendant Jeffrey Goldstein ("Goldstein") is an officer, director,  
13 and/or majority shareholder of Impulse, and as such controls its policies,  
14 activities, and practices, including those alleged herein on behalf of Impulse.  
15 All acts and practices undertaken by Goldstein on behalf of Impulse are and  
16 were for the benefit of his marital community. Defendant resides in the State  
17 of Georgia and transacts or has transacted business in the State of  
18 Washington and in the Eastern District of Washington.  
19

20  
21 1.4 Defendant Phil Huston ("Huston") is an officer, director, and/or  
22 majority shareholder of Impulse, and as such controls its policies, activities,  
23 and practices, including those alleged herein on behalf of Impulse. All acts  
24

1 and practices undertaken by Huston on behalf of Impulse are and were for  
2 the benefit of his marital community. Defendant resides in the State of  
3 Georgia and transacts or has transacted business in the State of Washington  
4 and in the Eastern District of Washington.  
5

6 1.5 Defendant Kenneth Adamson ("Adamson") is an officer, director,  
7 and/or majority shareholder of Impulse, and as such controls its policies,  
8 activities, and practices, including those alleged herein on behalf of Impulse.  
9 All acts and practices undertaken by Huston on behalf of Impulse are and  
10 were for the benefit of his marital community. Defendant resides in the State  
11 of Georgia and transacts or has transacted business in the State of  
12 Washington, and in the Eastern District of Washington.  
13  
14

15 1.6 The actions alleged herein to have been undertaken by the defendants  
16 were undertaken by each defendant individually, were actions of which each  
17 defendant had knowledge and that each defendant authorized, controlled,  
18 directed, or had the ability to authorize, control or direct, and/or were actions  
19 each defendant assisted and/or participated in, and are actions for which each  
20 defendant is liable. Each defendant aided, abetted, assisted, and conspired  
21 with the actions of each other defendant herein in that each defendant had  
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9

1 knowledge of those actions, provided assistance and benefited from those  
2 actions, in whole or in part. Each of the defendants was the agent of each of  
3 the other defendants, and in committing those acts herein alleged, was acting  
4 within the course and scope of such agency and with the permission and  
5 consent of other defendants.  
6

## 7 **II. JURISDICTION**

8  
9 2.1 This Court has original jurisdiction of the causes of action herein  
10 which are brought under the CAN-SPAM Act of 2003 – 15 U.S.C. §7701, *et*  
11 *seq.*, 15 U.S.C. §7707(g)(1).  
12

13 2.2 The unlawful actions of the defendants were committed in the States of  
14 Washington, Georgia, and in the judicial district of this Court.  
15

16 2.3 The Defendants regularly transact business within the State of  
17 Washington by virtue of the fact that they regularly send commercial bulk  
18 emails into the State, which emails are received on computers and other  
19 electronic devices owned and maintained by residents of the State in the  
20 State. As a result of the Defendants' acts and transactions within the State of  
21 Washington, this Court has personal jurisdiction over the Defendants under  
22 RCW 4.28.185(1)(a).  
23  
24

1       2.4       The causes of action complained of herein include allegations that  
 2       commercial electronic messages sent by or on behalf of the Defendants to the  
 3       Plaintiff violates RCW 19.190 et seq., the Washington Commercial  
 4       Electronic Mail Act (CEMA) and RCW 19.86 et seq. the Washington State  
 5       Consumer Protection Act (CPA).  
 6

7  
 8       2.5       This Court has diversity jurisdiction over the parties named herein as  
 9       plaintiffs and defendants are residents of different states, and the complaint  
 10       includes a prayer for relief in excess of \$75,000, exclusive of interest and  
 11       costs.  
 12

13       2.6       Jurisdiction to commence this action is conferred by 15 U.S.C. §7701,  
 14       *et seq.*, 15 U.S.C. §7707(g)(1); RCW 19.86.080, 19.86.090, 19.86.160, RCW  
 15       19.190.030 and RCW 4.12.020-.025.  
 16

### 17 18       **III. General Allegations**

19       3.1       Plaintiffs reallege and incorporate as though fully set forth herein, all  
 20       prior paragraphs herein.  
 21

22       3.2       Plaintiff Gordon is the registrant of the internet domain  
 23       “gordonworks.com”.  
 24

25       3.3       Plaintiff Gordon is the registrant of the internet domain

1 'gordonworks.com', and is an interactive computer service as that term is  
2 defined in 15 U.S.C. §7703(11); 47 USC 231(e)(4); and RCW 19.190.010  
3 (7), and is the owner of an internet domain server, which, among others,  
4 hosts the 'Gordonworks.com' domain.  
5

6 3.4 Gordon provides or enables computer access by multiple users to a  
7 computer server that hosts the "gordonworks.com" domain name and further  
8 provides electronic mail accounts to individuals utilizing their personal  
9 domain names for electronic messaging, including individuals residing  
10 within the Federal judicial district in which this case is brought.  
11

12 3.5 Plaintiff Gordon is a user of the interactive computer service provided  
13 by 'gordonworks.com', and maintains electronic mail message accounts with  
14 'gordonworks.com, including under the address jim@gordonworks.com as  
15 well as the domain name "rcw19190020.com".  
16

17 3.6 At all times relevant to this action Plaintiff status as Washington  
18 residents is and was public knowledge and available to defendants upon  
19 request from the Plaintiff, their domain registrar information, and other  
20 readily accessible sources.  
21

22 3.7 The Defendants have initiated the transmission of numerous  
23

1 commercial email messages directed to and through Plaintiff's interactive  
 2 computer service, and/or to and through Plaintiff's domain  
 3 'gordonworks.com', and/or further addressed to Plaintiff Gordon's email  
 4 addresses, including but not limited to jim@gordonworks.com.  
 5  
 6

#### 7 **IV. Causes of Action**

##### 8 **4.1 First Cause of Action**

##### 9 **Violations of the Can-Spam Act of 2003 [15 U.S.C. §7701 et seq.]**

10 Plaintiff realleges all preceding paragraphs and incorporates them herein as if set  
 11 forth in full:  
 12  
 13

14 4.1.1 Plaintiff has received thousands of commercial electronic mail  
 15 messages from or on behalf of defendants, sent to Plaintiff's electronic mail  
 16 server located in Benton and Franklin Counties, Washington, and/or to its  
 17 registered domains, including 'gordonworks.com' in violation of the CAN-  
 18 SPAM Act of 2003, 15 U.S.C. §7701 et seq.  
 19  
 20

21 4.1.2 Plaintiff Gordon further alleges that he received numerous items of  
 22 electronic mail from the defendants sent to the 'gordonworks.com'  
 23 domain, and to email addresses served thereby, that were responded to  
 24 with specific requests not to receive future commercial electronic mail  
 25



1 messages, which requests went unheeded for a substantial amount of time  
2 during which defendants continued to send unlawful email to plaintiff in  
3 violation of 15 U.S.C. §7704(a)(4).  
4

5 4.1.3 Plaintiff further alleges that the defendants sent at least one (1) separate  
6 item of electronic mail to the plaintiff to an address most likely harvested  
7 from domain name registration and/or by other means of anonymous internet  
8 information harvesting. Said conduct was in violation of 15 U.S.C.  
9 §7704(b)(1)(A)(i), and (ii).  
10

11 4.1.4 Plaintiff further alleges that defendants initiated the transmission of  
12 commercial electronic mail to plaintiff at and through his 'gordonworks.com'  
13 domain, and to individual email accounts at that domain and on its server,  
14 which electronic mail included materially misleading subject lines, which  
15 constitutes a violation of 15 USC 7704(a)(2).  
16  
17

18 4.1.5 Plaintiff further alleges that defendants initiated the transmission of  
19 commercial electronic mail to plaintiff at and through the 'gordonworks.com'  
20 domain and to individual email accounts served thereby, which electronic  
21 mail failed to provide a functioning mechanism, clearly and conspicuously  
22 displayed, that a recipient may use, in a manner specified in the message, to  
23  
24

1 request not to receive further messages from the sender, which constitutes  
2 violations of 15 USC 7704(a)(3)(A), and 7704(a)(4)(A)(ii).

3  
4 4.1.6 Plaintiff further alleges that defendants initiated the transmission of  
5 commercial electronic mail to plaintiffs at and through the  
6 'gordonworks.com' domain to individual email accounts served thereby,  
7 which electronic mail failed to provide clear and conspicuous notice that the  
8 mail is an "advertisement", which constitutes a violation of 15 USC  
9 7704(a)(4)(A)(i).

10  
11  
12 4.1.7 As a proximate result of said unlawful conduct by said defendants,  
13 Plaintiff is entitled to damages for the actual monetary loss incurred or  
14 statutory damages in the amount of up to \$100.00 in the case of violation of  
15 Section 5(a)(1) or up to \$25.00 in the case of each violation of the other  
16 subsections of Section 5 in the form of statutory damages as set forth in 15  
17 U.S.C. §7707(g)(1) and (3)(A).

18  
19  
20 4.1.9 Plaintiff furthermore seeks a preliminary and permanent injunction  
21 against the defendants for their current and future violations of the CAN-  
22 SPAM Act of 2003 as it and members of the general public will continue to  
23 incur damages as a result of the unlawful conduct of said defendants. The  
24

1 seeking of injunctive relief by the plaintiff is specifically authorized by 15  
2 U.S.C. §7707(g)(1)(A).

3  
4 4.1.6 Plaintiff furthermore seeks their attorney fees and costs against the  
5 defendants pursuant to 15 U.S.C. §7707(g)(4).  
6

7 **4.2 Second and Third Causes of Action**

8 **Violations of the Washington CEMA [RCW 19.190.020 et seq.]**

9 **and the Washington Consumer Protection Act [RCW 19.86 et seq.]**

10  
11 Plaintiffs reallege all preceding paragraphs and incorporates them herein as if set  
12 forth in full:  
13

14 4.2.1 It is a violation of RCW 19.190.020(1)(a)(b) and 19.190.030(1)(a)(b)  
15 to initiate the transmission, conspire with another to initiate the transmission,  
16 or assist the transmission, of a commercial electronic mail message from a  
17 computer located in Washington or to an electronic mail address that the  
18 sender knows, or has reason to know, is held by a Washington resident that  
19 uses a third party's internet domain name without permission of the third  
20 party, or otherwise misrepresents or obscures any information in identifying  
21 the point of origin or the transmission path of a commercial electronic mail  
22 message, or contains false or misleading information in the subject line.  
23  
24  
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26 FIRST AMENDED COMPLAINT  
27 FOR DAMAGES, PENALTIES, ETC.

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1 4.2.2 Defendants initiated the transmission, or assisted and/or conspired to  
 2 transmit numerous commercial electronic mail messages to Plaintiff's  
 3 domain and server, and to Plaintiff Gordon's individual email account which  
 4 defendants knew, or had reason to know were located in the state of  
 5 Washington, which emails misrepresented or obscured information  
 6 identifying the point of origin or the transmission path, and/or which  
 7 contained false or misleading information in the subject line, which  
 8 constitutes violations of RCW 19.190 et seq.

11 4.2.3 It is further a violation of RCW 19.190.080 to "solicit, request, or take  
 12 any action to induce a person to provide personally identifying information  
 13 by means of a web page, electronic mail message, or otherwise using the  
 14 internet by representing oneself, either directly or by implication, to be  
 15 another person, without the authority or approval of such other person."  
 16 Numerous emails sent by Defendants and received by Plaintiff violated this  
 17 provision of the CEMA.

18 4.2.4 Pursuant to RCW 19.190.020(1)(a)(b), each email sent in this Second  
 19 Cause of Action is a separate and distinct violation of RCW 19.190, and  
 20 pursuant to RCW 19.190.030(1)(a)(b), (2), and (3) constitutes a separate and

1 distinct violation of the Consumer Protection Act, RCW 19.86.

2 4.2.5 Further, defendants' acts herein alleged, constitute separate and  
3  
4 distinct violations of RCW 19.86 as they constitute unfair or deceptive acts  
5 and practices, occurring in the regular course of defendants' conduct of  
6 commerce and trade, and are unfair methods of competition, which acts have  
7 been, or are likely to be perpetrated against other residents of the State.  
8

9  
10 Plaintiff has been damaged as a result of Defendants' statutory violations as  
11 set forth herein, in an amount to be proven at trial.  
12

#### 13 14 **4.3 Fourth Cause of Action**

##### 15 **RCW 19.170 et seq.**

16 Plaintiff realleges all preceding paragraphs and incorporates them herein as if  
17 set forth in full:  
18

19 4.3.1 RCW 19.170 et seq. makes it unlawful under Washington State law to  
20 deceptively advertise or promote "free" prizes, gifts, awards, travel coupons  
21 or certificate, free item, or any other item offered in a promotion that is  
22 different and distinct from the goods, service, or property promoted by a  
23 sponsor. The statute makes a violation of RCW 19.170 a per se violation of  
24

1 the State Consumer Protection Act (RCW 19.86 et seq.)

2 4.3.2 Numerous email advertisements, i.e., "spam" which Defendants  
3  
4 transmitted to Plaintiff, as described herein, violated RCW 19.170 et seq., in  
5 the following ways: In violation of RCW 19.170.030:

- 6 (a) The offending emails contained offers, and promotions for  
7 prizes, gifts, and awards which failed to identify the name and  
8 address of the promoter and the sponsor of the promotion;  
9 and/or,
- 10 (b) failed to state the verifiable retail value of each prize offered in  
11 it; and/or,
- 12 (c) failed to disclose the verifiable retail value and odds for each  
13 prize which must be stated in immediate proximity on the same  
14 page with the first listing of each prize in type at least as large as  
15 the typeface used in the standard text of the offer; and/or
- 16 (d) failed to conspicuously disclose, if a person is required or  
17 invited to view, hear, or attend a sales presentation in order to  
18 claim a prize that has been awarded, may have been awarded, or  
19 will be awarded, the requirement or invitation must be  
20 conspicuously disclosed under subsection (7) of this section to  
21 the person in the offer in bold-face type at least as large as the  
22 typeface used in the standard text of the offer; and/or,
- 23 (e) or failed to otherwise comply with RCW 19.170.030 which  
24 requires that "No item in an offer may be denominated a prize,  
25 gift, award, premium, or similar term that implies the item is  
26 free if, in order to receive the item or use the item for its  
27 intended purpose the intended recipient is required to spend any  
28 sum of money, including but not limited to shipping fees,  
deposits, handling fees, payment for one item in order to receive  
another at no charge, or the purchase of another item or the

1 expenditure of funds in order to make meaningful use of the  
 2 item awarded in the promotion. The payment of any applicable  
 3 state or federal taxes by a recipient directly to a government  
 4 entity is not a violation of this section."

5 In violation of RCW 19.170.040:

- 6 (a) included a prize in an offer when the promoter or sponsor knows  
 7 or has reason to know that the prize will not be available in a  
 8 sufficient quantity based upon the reasonably anticipated  
 9 response to the offer.
- 10 (b) failed to comply with subsection (5) which provides: "If the  
 11 prize is not available for immediate delivery to the recipient, the  
 12 recipient shall be given, at the promoter or sponsor's option, a  
 13 rain check for the prize, the verifiable retail value of the prize in  
 14 cash, or a substitute item of equal or greater verifiable retail  
 15 value."
- 16 (c) failed to comply with subsection 5(b), which provides: "If the  
 17 rain check cannot be honored within thirty days, the promoter or  
 18 sponsor shall mail to the person a valid check or money order  
 19 for the verifiable retail value of the prize described in this  
 20 chapter."
- 21 (d) failed to comply with subsection (6), which provides: "A  
 22 sponsor shall fulfill the rain check within thirty days if the  
 23 person named as being responsible fails to honor it."
- 24 (e) failed to comply with subsection (7) , which provides: "The  
 25 offer shall contain the following clear and conspicuous  
 26 statement of recipients' rights printed in type at least as large as  
 27 the typeface used in the standard text of the offer:" If you  
 28 receive a rain check in lieu of the prize, you are entitled by law  
 to receive the prize, an item of equal or greater value, or the cash  
 equivalent of the offered prize within thirty days of the date on  
 which you claimed the prize."

20



1 (f) failed to comply with subsection (8) , which provides: "It is a  
2 violation of this chapter to misrepresent the quality, type, value,  
3 or availability of a prize."

4 **5. Demand for jury.** Plaintiff demands that this cause be tried to a jury.  
5

6 **PRAYER FOR RELIEF**

7 Plaintiff prays for relief as follows:  
8

9 That the Court adjudge and decree that defendant has engaged in the conduct  
10 complained of herein.

11 That the Court adjudge and decree that the conduct complained of herein  
12 constitutes violations of the Federal Can-Spam Act of 2003, 15 U.S.C. §7705,  
13 and that Plaintiff are entitled to all damages provided for thereunder, as may be  
14 proved at trial;  
15

16 That the Court adjudge and decree that the conduct complained of herein  
17 constitutes violations of the Washington Commercial Electronic Mail Act,  
18 RCW 19.190 et seq., and that Plaintiff is entitled to all damages provided for  
19 thereunder, as may be proved at trial, including but not limited to treble  
20 damages of up to three times the per statutory damages provided therein for  
21 each violation committed by the defendants, in an amount to be proven at trial;  
22  
23  
24



1 That the Court adjudge and decree that the conduct complained of herein  
 2 constitutes violations of RCW 19.170 et seq. and that Plaintiff is entitled to all  
 3 damages provided for thereunder, as may be proved at trial, including but not  
 4 limited to aggravated damages under RCW 19.170.060 of up to three times the  
 5 amount of statutory damages for these violations committed by the defendants  
 6 willfully and knowingly, and for defendants' unlawful activity.  
 7

8 That the Court adjudge and decree that the conduct complained of herein  
 9 constitutes violations of the Washington Consumer Protection Act, RCW  
 10 19.86 et seq., and that Plaintiff is entitled to all damages provided for  
 11 thereunder, as may be proved at trial;  
 12

13 That the Court assess civil penalties, pursuant to 19.190.040(1) of five  
 14 hundred dollars (\$500) per violation against defendant for each and every one  
 15 of the commercial electronic mail messages sent to plaintiff Gordon in  
 16 violation of RCW 19.190.020.  
 17

18 That the Court assess civil penalties, pursuant to 19.190.040(1) one thousand  
 19 dollars (\$1,000) per violation against defendant for each and every one of the  
 20 commercial electronic mail messages sent through plaintiff Gordon's  
 21 interactive computer service in violation of RCW 19.190.020.  
 22

1 That the Court assess civil penalties in the way of treble damages pursuant to  
 2 RCW 19.86.140, of two thousand dollars (\$2,000) for each and every one of  
 3 the violations of RCW 19.86 caused by the conduct complained of herein.  
 4

5 That the Court enter judgment pursuant to RCW 19.86.140 providing that  
 6 Plaintiff has been injured by the conduct complained of herein, and ordering  
 7 that Plaintiff recover from the defendant the costs of this action, including  
 8 reasonable attorney's fees.  
 9

10 That the Court order such other relief as it may deem just and proper to fully  
 11 and effectively remedy the effects of, and prevent future instances of, the  
 12 conduct complained of herein, or which may otherwise seem proper to the  
 13 Court.  
 14

15 DATED this 13<sup>th</sup> day of June, 2006.  
 16

17 **MERKLE SIEGEL & FRIEDRICHSEN, P.C.**  
 18

19 /s/ Robert J. Siegel  
 20 Robert J. Siegel, WSBA #17312  
 21 Attorneys for Plaintiffs  
 22  
 23  
 24  
 25

26 FIRST AMENDED COMPLAINT  
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**Certificate of Service**

I, hereby, certify that on June 13, 2006, we filed this pleading with this Court. The Clerk of the Court will provide electronic notification system using the CM/ECF, which will send an electronic copy of this Notice to: Floyd E. Ivey.

/S/ Robert J. Siegel  
Robert J. Siegel, WSBA #17312  
Attorneys for Plaintiffs

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